



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Fax-On-Demand 202 / 418-2830  
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Internet: <http://www.fcc.gov>  
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DA 05-3141  
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## DOMESTIC AUTHORIZATION GRANTED

### APPLICATION FOR TRANSFER OF CONTROL OF EMPIRE ONE TELECOMMUNICATIONS, INC., DEBTOR-IN-POSSESSION, TO EMPIRE ONE TELECOMMUNICATIONS, INC

WC Docket No. 05-168

#### By the Chief, Wireline Competition Bureau:

On April 1, 2005, Empire One Telecommunications, Inc., Debtor-in-Possession ("DIP") and Empire One Telecommunications, Inc. ("EOT") (together referred to as "Applicants"), filed an application, pursuant to section 63.03 and 63.04 of the Commission's rules,<sup>1</sup> requesting authority to provide domestic and international telecommunications services.<sup>2</sup> EOT, the sole surviving entity that emerged from the Chapter 11 reorganization that resulted in the transaction at issue, is a Delaware corporation. Under the reorganization plan approved and confirmed by the U.S. Bankruptcy Court for the Southern District of New York,<sup>3</sup> the majority interest in EOT is held by Hebard Ltd., a British Virgin Islands company (51.91%). Hebard Ltd. is wholly-owned by AE Finance, also a British Virgin Islands company, which is, in turn, controlled (99%) by Phyllis Quasha, of Nassau, Bahamas.

The Commission released a public notice accepting this application for streamlined processing on May 16, 2005. Specifically, the Applicants request approval for the transfer of control of DIP to EOT that took place on December 5, 2002, when the Bankruptcy Court

<sup>1</sup> 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

<sup>2</sup> Applicants formally supplemented the original application on April 19, 2005 to provide additional information requested by staff in order to deem the application complete. *See* Amendment to Application on Behalf of Empire One Telecommunications, Inc., Docket No. WC 05-168 (Apr. 19, 2005) ("EOT Amendment"). Applicants provided further clarification via e-mail on May 6, 2005, per staff's request. Applicants also filed an application for transfer of control associated with section 214 authorization for international services.

<sup>3</sup> Case number 01-11894-AAJG.

confirmed a Plan of Reorganization wherein exit financing was secured, equity was distributed in the reorganized debtor, and EOT emerged as the surviving entity.<sup>4</sup> Subsequently, on June 3, 2005, the United States Department of Justice ("DOJ"), the Federal Bureau of Investigation ("FBI") and the United States Department of Homeland Security ("DHS") (collectively, the "Executive Branch Agencies") filed with the Commission a petition to defer grant of this application while the Executive Branch Agencies and Applicants addressed potential national security, law enforcement, and public safety issues.<sup>5</sup> The application was removed from streamlining on June 8, 2005.<sup>6</sup>

On October 28, 2005, the Executive Branch Agencies submitted a letter officially withdrawing their request to defer action on this application. In the letter, the Executive Branch Agencies advised the Commission that, based on the information provided by the parties and the Executive Branch Agencies' review and analysis of potential national security, law enforcement, and public safety issues, they do not object to the grant of the instant application.<sup>7</sup>

The Wireline Competition Bureau finds, upon consideration of the record, that grant of the Application will serve the public interest, convenience, and necessity.<sup>8</sup> Upon consummation of the transaction, EOT holds a market share in the U.S. interstate interexchange market of less than 10 percent, and provides competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier in the U.S. that is not a party to the transaction. In addition, no party to this transaction is dominant with respect to any domestic service.<sup>9</sup>

Consistent with Commission precedent, the Bureau accords the appropriate level of deference to the Executive Branch Agencies' expertise on national security and law enforcement

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<sup>4</sup> *Domestic Section 214 Application Filed For Transfer of Control of Empire One Telecommunications, Inc., Debtor-In-Possession, To Empire One Telecommunications, Inc.*, WC Docket No. 05-168, Public Notice, DA 05-1356 (rel. May 16, 2005). At the time, Applicants did not seek Commission approval for the transfer of ownership that occurred when EOT emerged from bankruptcy. Applicants explain that their failure to seek Commission authority for the transfer of control at the time of the reorganization was inadvertent. See EOT Amendment at 2.

<sup>5</sup> See letter from Laura H. Parsky, Deputy Assistant Attorney General, to Marlene F. Dortch, Secretary, Federal Communications Commission, re: WC Docket No. 05-168 and IB File No. ITC-ASG-20050304-00088, filed electronically on June 3, 2005.

<sup>6</sup> *Notice of Removal of Domestic Section 214 Application From Streamlined Treatment*, WC Docket No. 05-168, Public Notice, DA 05-1630 (rel. June 8, 2005).

<sup>7</sup> See letter from Laura H. Parsky, Deputy Assistant Attorney General, to Marlene F. Dortch, Secretary, Federal Communications Commission, re: WC Docket No. 05-168 and IB File No. ITC-ASG-20050304-00088, filed electronically on October 28, 2005 ("Withdrawal Letter").

<sup>8</sup> See 47 C.F.R. § 63.03(c)(v).

<sup>9</sup> 47 C.F.R. § 63.03(b)(2)(i).

issues.<sup>10</sup> The Executive Branch Agencies indicate that the information provided by the Applicants addresses their stated concerns regarding national security, law enforcement, and public safety.<sup>11</sup>

Therefore, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 0.291 of the Commission's rules,<sup>12</sup> the Wireline Competition Bureau hereby grants the Application discussed in this Public Notice.

Pursuant to section 1.103 of the Commission's rules, the grant is effective upon release of this Public Notice.<sup>13</sup> Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within 30 days of the date of this Public Notice.<sup>14</sup>

For further information, please contact Alexis Johns at (202) 418-1167, or Renée Crittendon at (202) 418-2352.

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<sup>10</sup> The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a transfer of control or assignment application in which foreign ownership is an issue. *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24,094, 24,170-72, ¶¶ 178-182 (1997); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23,891, 23,919-921, ¶¶ 61-66 (1997), Order on Reconsideration, 15 FCC Rcd 18,158 (2000) ("*Foreign Participation Order*"). In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues. *See Foreign Participation Order*, 12 FCC Rcd at 23,919-921, ¶¶ 61-66.

<sup>11</sup> *See* Withdrawal Letter at 1.

<sup>12</sup> 47 C.F.R. § 0.291.

<sup>13</sup> *See* 47 C.F.R. § 1.103.

<sup>14</sup> *See* 47 C.F.R. §§ 1.106, 1.115.